

### REMARKS

This communication is filed in response to the Final Office Action dated May 5, 2010 (hereinafter "*Office Action*"). No claims are amended. Claims 1-4, 6, 9-13, and 16-25 are canceled. Claims 5, 7-8, and 14-15 were previously canceled. Claims 26-41 are added. Therefore, claims 26-41 are now pending in this application.

#### *The Rejection of Claims Under 35 U.S.C. § 103(a)*

The Examiner rejected claims 1-4, 6, 9, 10, 13, 16-18 and 20-25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 7,139,983 B2 to Kelts (hereinafter "*Kelts*") in view of U.S. Patent Application Publication No. 2003/0126608 A1 to Safadi (hereinafter "*Safadi*") and in further view of U.S. Patent Application Publication No. 2007/0136693 A1 to Lilleness (hereinafter "*Lilleness*").<sup>1</sup> Merely to advance the prosecution of this application toward allowance, Applicants have canceled claims 1-4, 6, 9, 10, 13, 16-18 and 20-25, rendering the Examiner's rejections of those claims moot. Accordingly, Applicants respectfully request that the Examiner withdraws the rejection of claims 1-4, 6, 9, 10, 13, 16-18 and 20-25 under 35 U.S.C. § 103(a).

As discussed in *KSR International Co. v. Teleflex Inc. et al.* (U.S. 2007), the determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence.<sup>2</sup> The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City* (383 U.S. 1, 17 (1966)): (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

Although other rationales for rejection under 35 U.S.C. § 103(a) may exist, the basis for an obviousness rejection is still grounded in a consideration of all claim elements. "All words in a claim must be considered in judging the patentability of that claim against the prior art."<sup>3</sup> Additionally, to render the claimed subject matter obvious, the prior art references must teach or

<sup>1</sup> *Office Action* at 2.

<sup>2</sup> See *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 7, 1336-37 (Fed. Cir. 2005).

<sup>3</sup> In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). See also MPEP § 2143.03.

suggest every feature of the claims.<sup>4</sup> Furthermore, any claim depending from a non-obvious independent claim is also non-obvious for at least the same reasons as the claims from which it depends.<sup>5</sup>

Each of new independent claims 26 and 40 recites, in part:

receiving, at a content distribution network, an authorization from a content provider, the authorization authorizing the content distribution network to provide digital content from the content provider to a user of the content distribution network; and

based on the receiving of the authorization, using a processor to link the content provider to a content destination, the content destination being associated with the user, the linking enabling the content provider to inform the user of digital content that the content provider is capable of providing, receive a request from the user for the digital content, and provide the digital content to the user based on the request.

Additionally, new independent claim 33 recites, in part,

a secure device to:

receive a request from a content distribution network to link the secure device to a content distributor;

responsive to the request from the content distribution network, link the secure device to the content distributor, the linking enabling the content provider to inform the user of digital content that the content provider is capable of providing, receive a request from the user for the digital content, and provide the digital content to the user based on the request; and

receive a request from a user of the content distribution network for the digital content;

None of the references cited by the Examiner in the *Office Action* (that is, none of *Kelts*, *Safadi*, or *Lilleness*) teaches or suggests at least the above recitations of new independent claims 26, 33, and 40. Therefore, no combination of the cited references can or does teach or suggest at least the above recitations of new independent claims 26, 33, and 40. Accordingly, Applicants respectfully assert that claims 26-41 are patentable over the cited references. Furthermore, each of dependent claims 27-32, 34-39, and 41 may be patentable for its own reasons.

<sup>4</sup> See Manual of Patent Examining Procedure §§ 706.02(j), 2143(A) (2008); MPEP § 2142 (2006) (citing *In re Vaack*, 947 F.2d, 488 (Fed. Cir. 1991)). Cited approvingly in *Ex parte WEN WEN* and *PATRICIA NG* at 7; Appeal No. 2009-000776; decided September 25, 2009.

<sup>5</sup> See MPEP § 2143.03.

The Examiner also rejected claims 11, 12 and 19 under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Kelts* in view of *Safadi* in view of *Lilleness* and in further view of U.S. Patent No. 6,184,878 B1 to Alonso (hereinafter "*Alonso*").<sup>6</sup> Merely to advance the prosecution of this application toward allowance, Applicants have canceled claims 11, 12, and 19, rendering the Examiner's rejections of those claims moot. Accordingly, Applicants respectfully request that the Examiner withdraws the rejection of claims 11, 12, and 19 under 35 U.S.C. § 103(a).

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<sup>6</sup> *Office Action* at 10.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 660-2016 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402-0938  
(408) 660-2016

Date September 7, 2010

By

Kirt L. Iverson

Kirt L. Iverson

Reg. No. 62,660

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 7<sup>th</sup> day of September, 2010.

Ryan B. Saunders

Name

Signature

[Signature]